



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE /

5 In re application of: Tara Chand Singhal)
)
Serial No: 10/091,882) Art Unit
) 3692
Filed: 03/06/2002)
10 For: Method and Apparatus for)
Restaurant Payment System)
Examiner: Maguire, Lindsay M.)
15 Attorney Docket: 11195.41)

APPEAL BRIEF

Commissioner for Patents

20 P O Box 1450, Alexandria, VA 22313-1450

Dear Sir:

This appeal brief, a transmittal form, and required fee of \$270.00 are enclosed. The Notice of Appeal was filed 6/24/09 on the Final office action dated 04/02/2009 and the claims have been twice rejected as required under 37 CFR §41.31.

25 The appeal is timely filed with in the two months statutory period of the Notice of Appeal, and contains the ten items under appropriate headings and in order as required under 37 CFR §41.37 Appellant's brief.

It should be noted that the Appellant is the applicant/inventor pro se and is not a registered practitioner.

30 **CERTIFICATE OF MAILING UNDER 37 CFR §1.8**

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail, postage prepaid, in an envelope addressed to: Mail Stop: Appeal Brief, Commissioner for Patents, P O Box 1450, Alexandria, VA 22313-1450, on July 27/2009 by

35 T. Singhal TARA CHAND SINGHAL, Applicant

APPEAL BRIEF

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(1) REAL PARTY IN INTEREST

Tara Chand Singhal, applicant/inventor

5 **(2) RELATED APPEALS AND INTERFERENCES**

None

(3) STATUS OF CLAIMS

10 Claims 1-17 have been canceled without prejudice. Claims 18-32 have been
rejected in a Final Office Action dated 04/02/2009. Claims 18-32 are pending in the
Application and are the subject of this appeal.

(4) STATUS OF AMENDMENTS

15 No Amendment after final office action rejection dated 4/2/2009 has been filed.

(5) SUMMARY OF CLAIMED SUBJECT MATTER

5 The embodiments facilitate secure payment to restaurant merchants, by the restaurant customer, without transferring customer identity bankcard data to the merchant employees and merchant computer sales systems, from where the customer identity bankcard data has been subject to theft and misuse.

10 The embodiments use a central system that pre-stores customer bankcard data and merchant data and the central system interfaces that enable customers and merchants to store such data.

15 In the restaurant the merchant point of sale system creates a paper bill that has printed on it, in addition to cost of meals, tax, and total payment amount, a service code. The service code contains merchant identification code to the central system, a table number and a serve number. The paper bill is presented to the customer for payment of meals served.

20 The customer, using his/her wireless web enabled device, connects to the central system and is presented a web data form from the central system. The customer then transfers or enters in the data form, the service code, the total dollar bill payment amount, and an optional tip and sends the completed form to the central system.

25 The central system with pre-stored merchant data and customer data, assembles a payment authorization record from the customer to the restaurant merchant and processes the bankcard payment authorization with a prior art card authorization network. The central system then receives a payment approval record from the card authorization network. The central system then adds to the payment approval record, a table and server identification, and sends to the merchant point of
30

sale systems. The central system also sends the payment approval record to the customer on his/her cell phone.

The merchant point of sale system displays the received payment approval record from the central system on a display terminal that identifies each payment by date, time, server, table number, payment amount, and payment status, enabling the employees of the restaurant to see that the payment has been made by a specific customer.

Thus a payment is made to a restaurant merchant on being presented a paper bill with a service code, by a customer using his/her wireless device, without the customer transferring/copying his/her customer identity bank card data in to the merchant computer systems and their employees/staff.

Summary

[Page 3, lines 22-29, Page 4, lines 1 to 14] The payment system includes a central system and a portable wireless device, a card processor, and a merchant payment terminal system. The following steps may be used to effect an efficient and secure payment to the restaurant.

The bill being presented by a waiter carries a service code, identifying a merchant number, a table number and a server number. On receiving the bill, the customer using the wireless device connects to a secure web connection with the central system and is presented a data card to enter data. The customer enters the service code, payment amount and the customer number. The central system with the pre-stored data of the merchant and the customer and using the card processor processes the payment. After the approval of the payment transaction is received from the card processor, the central system presents to the customer, on the wireless device, a data card showing that the payment has been processed. The central system concurrently also sends to the merchant payment terminal system a

data record showing the payment amount, the table number and the server number from where the payment has been processed successfully.

The central system 10 stores and/or can readily access merchant data including merchant id and personal data of a customer including information regarding one or more bank accounts of the customer.

Concise explanation of subject matter in claims involved in the appeal:

The following states a concise explanation of the subject matter defined in each of the independent claims involved in the appeal. The independent claims are: 18, 24 and 30, for which a concise explanation is being identified here by reference to page number, line number, and Figure number and by references numbers where applicable.

Claim 18 and dependent claims:

[Page 6, line 1 to page 13, line 29, and Figures 3 and 4.] The invention discloses system for a

Restaurant payment system that teaches a central system, a paper bill with a service code presented in the restaurant, and use of a customer wireless device to connect to the central system to make a payment to the merchant using the service code, that does not transfer customer id data to merchant.

A payment system for restaurant merchants that provides privacy of customer bankcard data of a customer from a merchant system, has a restaurant bill that shows a payment amount and a service code, the service code includes a merchant number identification to a central system that is separate from the merchant system; a wireless device of the customer with, (i) means for entering the service code, a payment amount, and an optional tip into the device, and (ii) means for sending the data to the central system which pre-stores customer data and merchant data; central system means for identifying the customer and processing a payment request from the customer to the merchant by retrieving customer and merchant

data and submitting a payment transaction request to an existing payment authorization network; central system means for receiving a payment approval record and sending payment approval notification to the customer on the wireless device; central system means for sending payment approval notification to the merchant system, wherein the central system having submitted the payment transaction request, the payment system maintains privacy of customer bankcard data from the merchant system.

The central system stores (i) customer identification means, (ii) a plurality of customer bank account data and (iii) wireless device notification means. The system uses a customer identification means using a personal number that is a combination of wireless device telephone number and a personal identification number that is entered into the wireless device.

The central system stores merchant identification that identifies the merchant to a payment authorization network and merchant computer system notification means.

The service code includes in addition to the merchant number identification, a table number and a server number.

The system has a payment approval notification to the merchant system includes the table number and the server number enabling a display terminal interfaced to the merchant system to display payment status data that includes a date, a time, a transaction reference, the table number, the server number, the payment amount, tip and a payment status.

For each claimed element of claim 18, the identification is as follows:

Claim 18 element (a)

page 6, lines 16-21; page 9, lines 10 to 14;

Claim 18 element (b)

page 6, lines 10-11; lines 24 to 28; page 13, lines 17 to 21

Claim 18 element (c)

page 6, lines 20-22; lines 26-28; page 8, lines 19-22; page 10, lines 27-30

Claim 18 element (d)

5 page 11, lines 17-22.

Claim 18 element (e)

page 6, lines 5-9; page 11, lines 24-27, page 12, lines 4 to 15.

Claim 24 and dependent claims:

10 [Page 6, line 1 to page 13, line 29, and Figures 3, 4 and 5.] The invention
discloses payment system for a restaurant payment system that teaches a central
system, a paper bill with a service code presented in the restaurant, and use of a
customer wireless device to connect to the central system to make a payment to the
merchant using the service code, where the payment system does not transfer
15 customer id data to merchant.

A payment system for restaurant merchants that provides privacy of customer
bankcard data of a customer from a merchant system, has a restaurant bill that
shows a payment amount and a service code, the service code includes a merchant
number identification to a central system that is separate from the merchant system;
20 a wireless device of the customer with, (i) means for entering the service code, a
payment amount, and an optional tip into the device, and (ii) means for sending the
data to the central system which pre-stores customer data and merchant data;
central system means for identifying the customer and processing a payment
request from the customer to the merchant by retrieving customer and merchant
25 data and submitting a payment transaction request to an existing payment
authorization network; central system means for receiving a payment approval
record and sending payment approval notification to the customer on the wireless
device; central system means for sending payment approval notification to the
merchant system, wherein the central system having submitted the payment
30 transaction request, the payment system maintains privacy of customer bankcard
data from the merchant system.

The central system stores (i) customer identification means, (ii) a plurality of customer bank account data and (iii) wireless device notification means. The system uses a customer identification means using a personal number that is a combination
5 of wireless device telephone number and a personal identification number that is entered into the wireless device.

The central system stores merchant identification that identifies the merchant to a payment authorization network and merchant computer system notification
10 means.

The service code includes in addition to the merchant number identification, a table number and a server number.

The system has a payment approval notification to the merchant system
15 includes the table number and the server number enabling a display terminal interfaced to the merchant system to display payment status data that includes a date, a time, a transaction reference, the table number, the server number, the payment amount, tip and a payment status.

20 **For each claimed element of claim 24, the identification is as follows:**

Claim 24 element (a)

page 6, lines 16-21; page 9, lines 10 to 14;

Claim 24 element (b)

page 6, lines 10-11; lines 24 to 28; page 13, lines 17 to 21

25 Claim 24 element (c)

page 6, lines 20-22; lines 26-28; page 8, lines 19-22; page 10, and lines 27-30

Claim 24 element (d)

page 11, lines 17-22.

Claim 24 element (e)

30 page 6, lines 5-9; page 11, lines 24-27, page 12, lines 4 to 15.

Claim 30 and its dependent claims:

[Page 6, line 1 to page 13, line 29, and Figures 3, 4 and 5.] The invention discloses system for a

5 Restaurant payment system that teaches a central system, a paper bill with a service code presented in the restaurant, and use of a customer wireless device to connect to the central system to make a payment to the merchant using the service code, that does not transfer customer id data to merchant.

A payment system for restaurant merchants that provides privacy of customer
10 bankcard data of a customer from a merchant system, has a restaurant bill that shows a payment amount and a service code, the service code includes a merchant number identification to a central system that is separate from the merchant system; a wireless device of the customer with, (i) means for entering the service code, a payment amount, and an optional tip into the device, and (ii) means for sending the
15 data to the central system which pre-stores customer data and merchant data; central system means for identifying the customer and processing a payment request from the customer to the merchant by retrieving customer and merchant data and submitting a payment transaction request to an existing payment authorization network; central system means for receiving a payment approval
20 record and sending payment approval notification to the customer on the wireless device; central system means for sending payment approval notification to the merchant system, wherein the central system having submitted the payment transaction request, the payment system maintains privacy of customer bankcard data from the merchant system.

25 The central system stores (i) customer identification means, (ii) a plurality of customer bank account data and (iii) wireless device notification means. The system uses a customer identification means using a personal number that is a combination of wireless device telephone number and a personal identification number that is entered into the wireless device.

30 The central system stores merchant identification that identifies the merchant to a payment authorization network and merchant computer system notification

means. The service code includes in addition to the merchant number identification, a table number and a server number.

The system has a payment approval notification to the merchant system includes the table number and the server number enabling a display terminal
5 interfaced to the merchant system to display payment status data that includes a date, a time, a transaction reference, the table number, the server number, the payment amount, tip and a payment status.

For each claimed element of claim 30, the identification is as follows:

Claim 30 element (a)

- 10 page 6, lines 16-21; page 9, lines 10 to 14;
page 6, lines 10-11; lines 24 to 28; page 13, lines 17 to 21
page 6, lines 20-22; lines 26-28; page 8, lines 19-22; page 10, and lines 27-30

Claim 30 element (b)

- page 11, lines 17-22.
15 page 6, lines 5-9; page 11, lines 24-27, page 12, lines 4 to 15.

(6) GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

GROUND #1:

5 Examiner has rejected system claims 18-23, under 35 USC 103(a)
Obviousness Rejection as being unpatentable over Showghi et al alone, US Patent
No. 6,473,739, October 29, 2002, Remote Ordering System. Appellant submits such
rejection is improper under 35 USC 103(a) and Graham v. Deere which governs
determination of obviousness by the USPTO.

10

GROUND #2:

Same as Ground # 1 above as applied to method claims 24 to 29.

15

GROUND #3:

Same as Ground #1 as above as applied to function claims 30-32.

(7) **ARGUMENT**

GROUND #1:

5 Examiner has rejected system claims 18-23, under 35 USC 103(a)
Obviousness Rejection as being unpatentable over Showghi et al alone, US Patent
No. 6,473,739, October 29, 2002, Remote Ordering System.

Appellant submits such rejection is improper under 35 USC 103(a) and
Graham v. Deere which governs determination of obviousness by the USPTO.

10 **Appellant's Arguments:**

The single prior art for obviousness rejection that is cited by the examiner is
Showghi et al. Showghi art is on remote ordering system for food and souvenir items
in a sports stadium venue from a stadium seat and payment for the same using a
15 wireless communication device.

From Showghi abstract: A system and method for enabling patrons at large-
scale spectator events at confined venues having identifiable seats utilizes
conventional or special hand-held, wireless communication devices to self-order
food, drink and souvenir items from remote order fulfillment locations within the
20 venue for delivery to identified seats. Hierarchical menus are provided for display of
items for purchase on the devices. A seat identification code is associated with the
order when transmitted via the existing telecommunications and Internet
infrastructure. Receipt of the order is acknowledged, and a confirmation code is sent
upon receipt of order delivery. There is automatic electronic payment for the order
25 charged to a patron account that is established by prearranged means.

In Showghi, as sports event attendees walk into the stadium, they may go to a
vendor kiosk, where (i) they register with the vendor with their stadium section and seat
number, (ii) provide a bankcard data for copying into the vendor merchant computers,
and (iii) are given a customized wireless device by the vendor merchant that displays
30 menu and enables placing an order for the selected items.

The sports patron then from their respective stadium seats, choose to order items by using the custom wireless device of the vendor. The vendor receives the order, delivers the order to the stadium seat. When the patron acknowledges on the wireless device, that the order has been satisfactorily received, the vendor merchant then charges the cost to the already provided bankcard and or account of the customer.

As an alternative, in Showghi, the customer patron may chose to use his/her own cell phone, connect to the vendor system, is presented a menu, selects the items and pays for them by providing his/her bankcard data. When the order, including the payment means such as bankcard data is received by the vendor system, it delivers the order and charges the order to customer bankcard data. The vendor computer system for accomplishing these tasks related to receiving food item orders, delivering the order to stadium seat, and processing payments has three subsystems, (i) for customer registration and handing out customized wireless devices, (ii) for tracking receiving and delivering of orders to stadium seats and (iii) for processing payments using customer bankcards with a prior art card authorization network.

In contrast, current invention claims 18-23 teach a payment system for payment to restaurant merchants, by a customer, on being presented a paper bill with a service code with the help of a central system that does not copy/transfer customer identity bankcard data to the merchant point of sale employees and computer systems.

Thus claim 18 facilitates secure payment to restaurant merchants while in the restaurant, by the restaurant customer, without transferring customer identity bankcard data to the merchant employees and merchant computer sales systems, from where the customer identity bankcard data has been subject to theft and misuse.

Claim 18 teaches a paradigm shift accomplishment to paying a restaurant merchant., where the merchant does not receive customer bankcard identity data and thus does not process the payment, while still able to receive and receiving a payment approval notification of the payment from the customer's bankcard from the existing card authorization network.

This paradigm shift to paying a restaurant merchant is accomplished with the help of a central system, an intermediary or third party central system, that is separate from the first party, the customer and also separate from the second party the restaurant merchant, thus being a third party central system and a service code printed on the restaurant bill, that identifies the merchant to the central system, and a wireless device of the customer to be able to connect to the central system and send the service code and the payment amount to the central system.

Therefore, claim 18 recites use of a central system that is separate from the merchant systems. The central system pre-stores customer bankcard data and also pre-stores merchant data for restaurant merchants.

For those restaurant merchants who have an account in the central system by having pre-stored their data in the central system, their point-of-sale system, either manually or electronically, is equipped to create a paper bill that is presented to the customer for payment, where the paper bill has printed on it, in addition to cost of meals, tax, and total payment required, a service code. The service code contains merchant identification number, a table number and a serve number.

For those customer who have an account with the central system having pre-stored their data in the central system, when connect to the central system on his/her web-enabled cell phone, are presented a web data form from the central system The customer transfers or enters the service code to the form and then enters the total dollar payment amount and an optional tip and sends the completed form to the central system server.

The central system server with pre-stored merchant data and customer data, assembles a payment authorization record from the customer to the restaurant merchant and processes the bankcard payment authorization with a prior art card authorization network. The central system server then receives a payment approval record from the card authorization network. The server then (i) sends the approval record to the customer on his/her cell phone, (ii) adds to the payment approval record optionally a table and server identification, and (iii) sends to the merchant point of sale systems.

The merchant point of sale display system displays the received record on a display terminal that identifies each payment by time, date, server and table number and status, enabling the employees of the restaurant to see that the payment has been made by a specific customer.

Thus a payment is made to a restaurant merchant on being presented a paper bill with a service code, by a customer using his/her wireless device, with the help of the central system without copying his/her customer id bank card data to the merchant computer systems and their employees/staff.

Distinguishing Showghi

Showghi is on remote ordering system and method using a wireless communication device, for food in a venue from a stadium seat and payment for it. For payment of the food items, Showghi uses traditional prior art methods, where the merchant system processes the payment transaction. Hence, Showghi prior art is on the convenience of remote ordering food and paying for such food from a stadium seat in a sports venue from a vendor merchant using a wireless communication device from a seat in a stadium venue.

In Showghi, different methods of payment are suggested that include, pre-registering patron bankcard data with the venue merchant at the time of entry to the

venue, sending bankcard data via a customer cell phone device to the venue merchant system, or alternate forms of payment that include billing the cost of the food items to a telephone bill of the customer, where the telephone company may provide this type of payment service for small dollar amounts to a merchant.

5

The Patent and Trademark Office ("PTO") determines the scope of claims in patent applications not solely on the basis of the claim language, but upon giving claims their broadest reasonable construction "in light of the specification as it would be interpreted by one of ordinary skill in the art." *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364[, 70 USPQ2d 1827] (Fed. Cir. 2004).

10

Examiner by equating claim terms "central system" and "service code" as used in the claims in light of the specification with Showghi terms "Vendor Merchant system" and "Identification code" respectively, has erred in applying the "Broadest reasonable construction" standard and as a basis for 103(a) obviousness rejection.

15

First, in the obviousness rejection, the examiner misconstrues and errs (i) in equating the "central system" of the present invention claims 18, 24 and 30 with the Showghi "vendor merchant system".

20

Showghi vendor merchant system has a remote control station 12, venue server 16 and order processing server 18.

Examiner misconstrues the Showghi prior art, specifically items, remote control station 12, venue server 16 and order processing 18 items as shown in Figure 1 and 2, and col.2 lines 56-67,. The Showghi items 12, 16 and 18, in Figures 1 and 2, collectively represent a "vendor merchant system" and not a "central system" of the present invention that is separate from a merchant system.

25

Specifically, Showghi item 12, is a kiosk/station where a patron can rent a wireless device and that is true for both Figures 1 and 2. When the patron rents a device at kiosk/station 12, payment arrangements are made by the patron providing

30

debit/credit card data to the kiosk/station 12. When the patron orders food by the wireless device, either rented at the station 12 or his/her own wireless device, as shown in Showghi Figures 1 and 2, the order is routed to the venue server 16.

5 From Showghi, col. 4, lines 19-23, In Figure 1, the base trans receiver nodes 14 and other client work stations are networked to the local server computer 16, which maintains system records, and facilitates the overall operation of the remote ordering system. The venue server 16 receives the order and distributes the orders to the order fulfillment server 18 that are closest to the patron seat in the stadium.

10 From Showghi col. 6, lines 17 to 26: most venues will necessarily have several order fulfillment centers. As venues can be quite large, it would be impractical to deliver all orders from a single processing location, but to have multiple locations in a large venue in order to keep proximity to the customer, thus the route for physical delivery,
15 reasonably minimized. To assure prompt and accurate delivery of orders, it is necessary to identify the location of the patron's seat to determine which order fulfillment center within the venue to send the order to. Hence the fulfillment server 18 receives the order from the venue server 16, to the fulfillment center 18, which is closest to the patron.

20 It is abundantly clear from the Showghi description of items remote control station 12, venue server 16 and order processor 18, as above, where each item performs a function of the venue merchant system and they collectively represent a merchant system, where kiosk item 12 has the task of renting the wireless devices and
25 collecting payment data, venue server item 16 as the task of receiving the order, and distributing the order to order fulfillment center 18 closest to the patron in the venue.

Therefore the “central system” of present invention that is separate from the merchant system is entirely different than the Showghi “vendor merchant
30 **system” implemented in Vendor merchant servers 12, 16 and 18, as they perform an entirely different function.**

Second, Examiner, in the obviousness rejection, also misconstrues Showghi “identification code” with the “service code” of the present invention claims 18, 24 and 30.

5

Showghi uses an identification code to specify patron’s seat location in the stadium venue, where such identification code is printed on the event ticket, as in Showghi Figure 6, ticket 62 and identification code 64. When the patron communicates to the venue merchant, the venue merchant system identifies the patron and or location of the patron in the stadium by this identification code.

10

In contrast, the service code of this invention, as in claim 18, 24 and 30, includes a merchant number that identifies the merchant to the central system that is separate from the merchant system, for retrieving merchant identification data in the central system for processing a payment transaction.

15

Hence, the identification code of Showghi is inherently different than the service code of the claims 18, 24 and 30, where the Showghi identification code as printed on the event ticket identifies the patron by the seat number, and in contrast, the service code printed on a restaurant bill in a restaurant includes a merchant number that identifies the restaurant merchant to the central system that is separate from the merchant system.

20

25

Third, In contrast, in the current invention, the claim group 18-23 is for protecting customer identity bankcard data from the merchant systems and thus have an entirely different scope than Showghi et al.

5 The independent claim 18 provides:

18. A payment system for restaurant merchants that provides privacy of customer bankcard data of a customer from a merchant system, comprising:

a. a restaurant bill that shows a payment amount and a service code, the
10 service code includes a merchant number identification to a central system that is separate from the merchant system;

b. a wireless device of the customer with, (i) means for entering the service code, a payment amount, and an optional tip into the device, and (ii) means for sending the data to the central system which pre-stores customer data and
15 merchant data;

c. central system means for identifying the customer and processing a payment request from the customer to the merchant by retrieving customer and merchant data and submitting a payment transaction request to an existing payment authorization network;

20 d. central system means for receiving a payment approval record and sending payment approval notification to the customer on the wireless device;

e. central system means for sending payment approval notification to the merchant system, wherein the central system having submitted the payment transaction request, the payment system maintains privacy of customer bankcard
25 data from the merchant system.

The claim 18 has element (a) to (e) that are not taught by Showghi, as they relate to a central system separate from the merchant system, a paper bill with a service code, and how the central system works with a customer wireless device
30 and the service code to effect a payment to the merchant and that does not

copy/transfer customer id and bankcard data to the merchant point of sale systems, as they do not process the payment transaction.

Hence, the scope and content of prior art and the differences between the claimed invention and the prior art are such that the current invention has an entirely different scope than the prior art.

Fourth, for those with Showghi ordinary skill in the art, the current invention system and method of payment would not have been obvious, based on Ordinary Skill in the art Analysis based on KSR v. Teleflex.

Showghi art is on remote ordering food items from a stadium seat by a wireless device and paying for them by any number of prior art payment means common in the industry.

Showghi ordinary skill in the art is on remote ordering system, using any number of traditional prior art payment systems for the remote order. The current payment system is for secure payment systems that do not transfer the customer identity bankcard data to merchant systems. Hence that would not be obvious to those with Showghi ordinary skill in the art, as to those of Showghi ordinary skill in the art, the objective to protect customer id bankcard data from the merchant systems themselves did not exist and is not accomplished by the Showghi art.

Showghi discloses a variety of vendor payment methods such as (i) turning over bankcard or bank account data at time of check in at vendor merchant kiosk, (ii) supplying bankcard data via wireless telephone at time of ordering and (iii) paying by charging on the phone bill and the like. Showghi does not disclose the method of payment where the payment can be made without turning over any customer id data including bankcard data and even telephone number data. Hence Showghi ordinary skill in the art is directed to remote ordering in a stadium and paying by any number

of prior art methods and is not even close and not directed to protecting the customer id data in a payment transaction.

For those with Showghi ordinary skill in the art, the problem of securing customer identity bankcard data from merchants themselves is not addressed and/or accomplished, and thus cannot be obvious.

Hence, Showghi art does not teach privacy and or protection of the customer bankcard data from a merchant system. In contrast, the present claims 18, 24 and 30 are directed to methods and systems for the privacy protection of the bankcard data from the merchant system during a payment transaction to a restaurant merchant.

Claim 18 teaches a paradigm shift accomplishment to paying a restaurant merchant., where the merchant does not receive customer bankcard identity data and thus does not process the payment, while still able to receive and receiving a payment approval notification of the payment from the customer's bankcard from the existing card authorization network and that would not be obvious to those with Showghi ordinary skill in the art for the reasons as above.

Graham v. Deere, governs the application of 35 USC 103(a), at US PTO. Under the four part Graham inquiry, "The underlying factual inquiries include [1] the scope and content of the prior art; [2] the differences between the claimed invention and the prior art; [3] the level of ordinary skill in the art; and [4] objective evidence of nonobviousness, including commercial success, copying, and long-felt need." *State Contr. & Eng'g Corp. v. Condotte America, Inc.*, 346 F.3d 1057, 1068 (Fed. Cir. 2003), citing Graham v. John Deere Co., 383 U.S. 1, 17-18 (1966).

Appellant submits, that under factual inquiries [1] that the scope and content of prior art and [2] the differences between the claims of this invention and prior art is such that an obviousness rejection has no grounds. In view of these arguments,

claim 18 is not obvious over the Showghi prior art. Dependent claims 19-23 are likewise not obvious over the same prior art. Therefore, the obviousness rejection fails the Graham v. Deere test.

5 **GROUND #2:**

Examiner has rejected method claims 24-29, under 35 USC 103(a) Obviousness Rejection as being unpatentable over Showghi et al alone, US Patent No. 6,473,739, October 29, 2002, Remote Ordering System.

Appellant submits such rejection is improper under 35 USC 103(a) and
10 Graham v. Deere which governs determination of obviousness by the USPTO.

Appellant's Arguments:

Applicant sets forth same arguments as for Ground # 1 and are constructively copied here as though fully set forth.

15 In contrast, in the current invention, the claim group 24-29 is for protecting customer identity bankcard data from the merchant systems. The independent method claim 24 provides:

24. A method of payment to restaurant merchants that provides privacy of
20 customer bankcard data of a customer from a merchant system, comprising the steps of:

 a. presenting a restaurant bill that shows a payment amount and a service code, the service code includes a merchant number identification to a central system that is separate from the merchant system;

25 b. entering into a wireless device of the customer, (i) the service code, a payment amount and an optional tip into the device, and (ii) sending the data to the central system which pre-stores customer data and merchant data;

 c. identifying the customer and processing a payment transaction from the customer to the merchant by the central system by retrieving customer and
30 merchant data and submitting a payment transaction request to an existing payment authorization network;

d. receiving a payment approval record by the central system and sending payment approval notification to the customer on the wireless device;

e. sending payment approval notification to the merchant system, by the central system, wherein the central system having submitted the payment

5 transaction request the payment system maintains privacy of customer data from the merchant system.

The claim 24 has element (a) to (e) that are not taught by Showghi, as they relate to a central system separate from the merchant system, a paper bill with a
10 service code, and how the central works with a customer wireless device and the service code to effect a payment to the merchant and does not copy/transfer customer id and bankcard data to the merchant point of sale systems, as they do not process the payment transaction.

15 Showghi art does not teach privacy and or protection of the customer bankcard data from a merchant system. In contrast, the present claims 18, 24 and 30 are directed to methods and systems for the privacy protection of the bankcard data from the merchant system during a payment transaction to a restaurant merchant.

20 Hence, the scope and content of prior art and the differences between the claimed invention and the prior art are such that the current invention has an entirely different scope than the prior art.

For the reasons stated above, the nature and scope of the claim 24 is such
25 that this is not obvious over Showghi under Graham v. Deere test of obviousness. Likewise the dependent claims 25-29 are also not obvious.

GROUND #3:

Examiner has rejected function claims 30-32, under 35 USC 103(a)
30 Obviousness Rejection as being unpatentable over Showghi et al alone, US Patent No. 6,473,739, October 29, 2002, Remote Ordering System.

Appellant submits such rejection is improper under 35 USC 103(a) and Graham v. Deere which governs determination of obviousness by the USPTO.

Appellant's Arguments:

5 Applicant sets forth same arguments as for Ground # 1 and are constructively copied here as though fully set forth.

 In contrast, in the current invention, the claim group 30-32 is for protecting customer identity bankcard data from the merchant systems. The independent claim 30 provides:

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30. A privacy payment system for restaurant merchants, that protects customer bankcard data from a merchant system, comprising:

 (a) a customer wireless device means for origination of a payment request for payment of a bill to a restaurant merchant, the bill has a service code that includes a merchant number identification to a central system, that is separate from the
15 merchant system, the wireless device having means for reading the service code and for sending to the central system;

 (b) the central system processing means for processing the payment request with pre-stored customer data and merchant data using an existing payment
20 authorization network and forwards the payment approval notification to the merchant system, wherein the central system processing the payment request, the privacy payment system maintains privacy of customer bankcard data from the merchant system.

25 The claim 30 has element (a) to (b) that are not taught by Showghi, as they relate to a central system separate from the merchant system, a paper bill with a service code, and how the central works with a customer wireless device and the service code to effect a payment to the merchant and does not copy/transfer customer id and bankcard data to the merchant point of sale systems, as they do not
30 process the payment transaction.

Showghi art does not teach privacy and or protection of the customer bankcard data from a merchant system. In contrast, the present claims 18, 24 and 30 are directed to methods and systems for the privacy protection of the bankcard data from the merchant system during a payment transaction to a restaurant merchant.

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Hence, the scope and content of prior art and the differences between the claimed invention and the prior art are such that the current invention has an entirely different scope than the prior art.

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For the reasons stated above, the nature and scope of the claim 30 is such that this is not obvious over Showghi under Graham v. Deere test of obviousness. Likewise the dependent claims 31-32 are also not obvious.

(8) CLAIMS APPENDIX

Claims involved in this appeal are:

5 Claims 1-17 (cancelled)

18. A payment system for restaurant merchants that provides privacy of customer bankcard data of a customer from a merchant system, comprising:

10 f. a restaurant bill that shows a payment amount and a service code, the service code includes a merchant number identification to a central system that is separate from the merchant system;

15 g. a wireless device of the customer with, (i) means for entering the service code, a payment amount, and an optional tip into the device, and (ii) means for sending the data to the central system which pre-stores customer data and merchant data;

h. central system means for identifying the customer and processing a payment request from the customer to the merchant by retrieving customer and merchant data and submitting a payment transaction request to an existing payment authorization network;

20 i. central system means for receiving a payment approval record and sending payment approval notification to the customer on the wireless device;

25 j. central system means for sending payment approval notification to the merchant system, wherein the central system having submitted the payment transaction request, the payment system maintains privacy of customer bankcard data from the merchant system.

19. The system as in claim 18, further comprising:

the central system stores (i) customer identification means, (ii) a plurality of customer bank account data and (iii) wireless device notification means.

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20. The system as in claim 19, further comprising:
the customer identification means using a personal number that is a combination of wireless device telephone number and a personal identification number that is entered into the wireless device.

21. The system as in claim 18, further comprising:
the central system stores merchant identification that identifies the merchant to a payment authorization network and merchant computer system notification means.

22. The system as in claim 18, where the service code, further comprising:
the service code includes in addition to the merchant number identification, a table number and a server number.

23. The system as in claim 22, further comprising:
the payment approval notification to the merchant system includes the table number and the server number enabling a display terminal interfaced to the merchant system to display payment status data that includes a date, a time, a transaction reference, the table number, the server number, the payment amount, tip and a payment status.

24. A method of payment to restaurant merchants that provides privacy of customer bankcard data of a customer from a merchant system, comprising the steps of:

f. presenting a restaurant bill that shows a payment amount and a service code, the service code includes a merchant number identification to a central system that is separate from the merchant system;

g. entering into a wireless device of the customer, (i) the service code, a payment amount and an optional tip into the device, and (ii) sending the data to the central system which pre-stores customer data and merchant data;

h. identifying the customer and processing a payment transaction from the customer to the merchant by the central system by retrieving customer and merchant data and submitting a payment transaction request to an existing payment authorization network;

5 i. receiving a payment approval record by the central system and sending payment approval notification to the customer on the wireless device;

j. sending payment approval notification to the merchant system, by the central system, wherein the central system having submitted the payment transaction request the payment system maintains privacy of customer data from the
10 merchant system.

25. The method as in claim 24, further comprising the steps of:

storing by the central system (i) customer identification means, (ii) a plurality of customer bank account data, and (iii) wireless device notification means.

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26. The method as in claim 25, further comprising the steps of:

using a personal number that is a combination of wireless device telephone number and a personal identification number as the customer identification means that is entered into the wireless device.

20

27. The method as the central system in claim 24, further comprising the steps of:

storing in the central system, the merchant identification that identify the merchant to a payment authorization network and merchant computer system notification means.

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28. The method as in claim 24, where the restaurant bill, further comprising the steps of:

including in the service code in addition to the merchant number identification, a table number and a server number.

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29. The method as in claim 28, further comprising the steps of:

receiving the payment approval notification from the central system into the merchant system including the table number and the server number, displaying payment status data on a display terminal interfaced to the merchant system, that includes, a date, a time, a transaction reference, the table number, the server number, the amount, tip, and the payment status.

30. A privacy payment system for restaurant merchants, that protects customer bankcard data from a merchant system, comprising:

(a) a customer wireless device means for origination of a payment request for payment of a bill to a restaurant merchant, the bill has a service code that includes a merchant number identification to a central system, that is separate from the merchant system, the wireless device having means for reading the service code and for sending to the central system;

(b) the central system processing means for processing the payment request with pre-stored customer data and merchant data using an existing payment authorization network and forwards the payment approval notification to the merchant system, wherein the central system processing the payment request, the privacy payment system maintains privacy of customer bankcard data from the merchant system.

31. The privacy payment system as in claim 30, further comprising:

the payment request bill identifies a payment amount and the service code as printed on the bill, from the merchant system, and presented to the customer at the merchant's premises includes a table number and a server number.

32. The privacy payment system as in claim 30, comprising:

the central system sends the payment approval notification to the customer on the wireless device, contemporaneously to the payment approval notification to the merchant system.

(9) EVIDENCE APPENDIX

None

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(10) RELATED PROCEEDINGS APPENDIX

None

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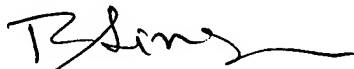
CONCLUSION

Appellant submits, based on the arguments presented in this appeal, the current claimed subject matter is entirely of a different scope and the current claims
15 18-32 are not obvious under section 35 USC 103(a) and Graham v. Deere test over Showghi et al alone, based on arguments presented in this appeal.

Dated this the 27th day of July, 2009

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Respectfully submitted,



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Appellant

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